

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10716 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JAYANTIBHAI JETHABHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR AJ PATEL for Petitioners

MR Y.M.THAKKAR for Respondent No. 1 and 2.

UNSERVED for Respondent No. 3

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 28/02/96

ORAL JUDGEMENT

Leave to delete respondent no.3. Rule. Service of Rule is waived by learned Assistant Government Pleader Shri Y.M.Thakkar for respondent nos.1 and 2. Having regard to the facts and circumstances of the case and upon joint request, matter is taken up to day for final hearing.

In this petition under Art.226 of the

Constitution of India, following two points are raised for consideration and adjudication of this court:-

- (1) Whether the land bearing survey no.193/1 situated at Sola could have been included in the holdings of respondent no.3, when the said land is, in fact, held and possessed by three different co-sharers?
- (2) Whether the authorities below are right in law in declaring land bearing survey no.193/1 of Sola as surplus while finalising the form filled by respondent no.3, when it is held by three different persons and thereby play providence to the right of the petitioners ?

The petitioner had filed form under section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the 'Act' for short) read with rules 3 and 9 of the Urban Land (Ceiling and Regulation) Rules (the 'Rules' for short), wherein he claimed one third share in all the properties namely land bearing survey no. 193/1 situated near Sola. Similarly his brother Ranchhodbhai Atmaram Patel had also filed such form, copy whereof is produced at Annexure D, wherein also the aforesaid land had been shown and stated that he has one third share. However, it is contended that the competent authority has not accepted the contention of the brother of the petitioner namely Ranchhodbhai Atmaram Patel and is held to be of his ownership and which is declared as surplus land. The Assistant Government Pleader has neither objected to this proposal, nor with the map noting. Learned AGP Mr.Thakkar, while appearing for the respondents nos. 1 and 2, upon instruction from the officer who is present in the court, conceded that the form submitted by the said Ranchhodbhai Atmaram Patel is finalised and disputed land bearing survey no. 193/1 is held to be the property of the said Ranchhodbhai Atmaram Patel only. It is in this context, the learned counsel for the petitioner Mr. Patel submitted that the petitioner's form is yet not processed and finalised and therefore, there is going to be serious prejudice to the properties right of the petitioner as the same competent authority has found the disputed land of the ownership of his brother Ranchhodbhai Atmaram Patel. The learned counsel for the petitioner has, therefore, submitted that the competent authority may be directed to expeditiously dispose of the finalisation of the process and proceeding of the form filed by the petitioner and he should be directed to decide extent and right or share of the petitioner in the said land bearing survey no. 193/1 in accordance with

law, uninfluenced by earlier finalisation of the firmed decision of the competent authority. This statement is also rightly not opposed by the learned AGP Mr. Thakkar.

Having regard to the facts and circumstances, the respondents nos. 1 and 2 are directed to decide and dispose of the aforesaid form no.1 under section 6(1) of the Act submitted by the petitioner in accordance with law, uninfluenced by the factum or decision rendered in the proceedings for finalisation of the form submitted by Ranchhodbhai Atmaram Patel as early as possible and preferably within ninety days from the date of writ of this court. The competent authority is also obliged to consider right, title and interest of the petitioner in the disputed land, without influenced by the decision in the case of Ranchhodbhai Atmaram Patel. The petitioner is therefore, required to be allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent, with no order as to costs.

It is clarified upon the request of the learned Assistant Government Pleader Shri Y.M.Thakkar that the competent authority will be at liberty to proceed further in the case of Ranchhodbhai Atmaram Patel except one third share claimed by the petitioner in the disputed land bearing survey no. 193/1.

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